

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

MORRISSEY K.,

Claimant,

OAH No. L 2006070430

vs.

INLAND REGIONAL CENTER,

Service Agency.

**DECISION**

This matter came on regularly for hearing before Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, at San Bernardino, California on January 18, 2007.

Claimant appeared through his grandfather and grandmother and was represented by Tom DiVerde, an attorney with the Office of Clients' Rights Advocacy, Protection and Advocacy, Inc.

The Inland Regional Center (agency) was represented by Deborah Crudup.

Oral and documentary evidence was received and the record was left open so the parties could present written closing statements/briefs. On February 1, 2007, the statements/briefs were received, read and considered, and the matter was deemed submitted that same date.

**ISSUE**

Should claimant's Adoptive Assistance Program (AAP) benefits be set based on the rates of a level 3 or level 4, step G, licensed residential care facility?

## FACTUAL FINDINGS

1. Claimant, whose date of birth is December 22, 1994, is a twelve-year-old male who qualifies for agency services based on a diagnosis of “severe and profound” Mental Retardation, Cerebral Palsey, Epilepsy and blindness. (Exhs. 8, 9, 10, 11, 12, 13, 14, 15, and 16.)

2. Claimant’s grandparents, his legal guardians, are in the process of adopting claimant so they requested an assessment by the agency to determine the level of care facility claimant would require if he were placed in a care facility by the agency.

3. On June 14, 2006, claimant was assessed by the agency to determine the level of care claimant would need if he were placed in a program by the agency. This rate, known as the Alternative Residential Model (ARM) rate is used by the San Bernardino County Department of Children’s Services/Adoptions, to determine the level of funds to be provided to adoptive parents, as part of the County funded Adoption Assistance Program (AAP). As a result of the assessment, the agency assessed “the level of service at a Level-II rate.” (Exh. 3.)

4. On June 27, 2006, claimant’s social worker with the San Bernardino County of Children’s Services/Adoptions notified the agency that, “I have received your rate letter and disagree with the ARM level.” (Exh. 2.) Subsequently, claimant’s grandparents timely appealed from the agency’s level 2 determination and the instant hearing ensued.

5. At the outset of the instant hearing, the parties agreed that the agency’s rate assessment at an ARM level 2 was wrong. The agency conceded that the ARM rate should be no less than a level 3. Claimant, however, maintained that an ARM rate level 4, step G, was the appropriate rate level.

6. Claimant’s grandmother’s testimony and a review of the evaluations concerning claimant established that claimant regularly exhibits the following behaviors and self-help deficits: When claimant is angry or frustrated he becomes “resistive.” Claimant tantrums, is aggressive, destroys property, engages in self-abuse and goes “AWOL” while at school and at home. Claimant’s tantrums consist of pinching, pushing, kicking and biting. Claimant’s tantrum behaviors occur daily. Claimant’s tantrums can escalate to outright aggression, consisting of hitting and biting others. Claimant has caused minor injuries to others. Claimant regularly engages in destructive behavior and has damaged the refrigerator, oven, and cabinets in the family home. Claimant can not bathe himself, brush his teeth, or dress himself, nor is he “potty trained.” When being transported to school claimant will wander around in the bus unless he is restrained.

7. In an August 2, 2006 letter, Dr. Stephen Ashwal, a Pediatric Neurologist with Loma Linda University Children’s Hospital reported: “[claimant] is an 11-year-old boy with a

diagnosis of epilepsy, NAT, cerebral palsy and developmental delay. I have followed [claimant] for most of his life. He will need total care from his parents.” (Exh. Q.)

8. In a February 9, 2005 placement referral, claimant’s agency service coordinator requested a “level 4” service level to provide respite care for claimant. During the instant hearing, claimant’s service coordinator testified that claimant could be cared for in a level 3 facility, with “augmented services.” The “augmented services” would consist of a one-on-one aide to care for claimant’s needs.

9. A Consumer Resource Specialist with the agency established that, in conformity with California Code of Regulations, title 22, section 35333, the AAP provides benefits to facilitate the adoption of children who may not be adopted without the financial benefits provided by the AAP. The AAP provides that children with special needs may receive financial support from their county of residence. The Department of Developmental Services (DDS) is charged with determining the rate of AAP assistance the respective county must pay to facilitate the adoption of special needs children. In establishing the maximum AAP rate to be paid by the county, DDS sets a care level based on the foster family home rate the respective service agency would pay for the child if the child were placed in a service agency facility. The rate levels range from level 1 to level 4, with level 1 being the level requiring the least supervision of the child and level 4 being the level requiring the most supervision. Level 4 is further divided into the following “steps:” A through C (requiring 8 consultant service hours per month); D through F (requiring 12 consultant service hours per month); and G through I (requiring 16 consultant service hours per month. When asked about claimant’s self-help deficits and his disruptive and self-injurious behaviors, as described by claimant’s grandmother and in the documents received in evidence, the Resource Specialist conceded that claimant’s deficits and behaviors fell into the “severe” category and he would need to be cared for in a level 3 facility “with additional supports.” Then, if the level 3 with “additional supports” level of care was not successful, that is, if claimant did “not make progress,” the “highest level” claimant would need would be “4F.”

## LEGAL CONCLUSIONS

1. The Factual Findings, considered in their entirety, reveal that the Agency incorrectly determined that claimant should be categorized as level 2 for purposes of determining the appropriate AAP rate. Claimant’s self-help deficits and his disruptive and self-injurious behaviors, as described in Finding 6 establish that claimant’s deficits and behaviors are “severe.” Consequently, pursuant to the rate schedule established by California Code of Regulations, title 17, section 56013, subdivision (d)(1)(A) and subdivision (d)(1)(C), claimant qualifies for, and would need, a level 4, step G, care facility and must be rated at that level for establishing the appropriate AAP rate.

## ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The agency's determination that claimant claimant's Adoptive Assistance Program (AAP) benefits be set based on the rate of a level 2 licensed residential care facility is set aside. The agency shall set the rate of claimant's benefits at level 4, step G.

DATED: February \_\_\_\_\_, 2007

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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

Note: This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5 (b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.